

Leelanau Conservancy

September 11, 2012

Senator Jack Brandenburg
Committee Chair, Senate Finance Committee
P.O. Box 30036
Lansing MI 48909-7536

Dear Senator Brandenburg:

Thank you for agreeing to hold a hearing before the Senate Finance Committee to discuss Senate Bill 805, sponsored by Senator Mike Green. The bill in question would eliminate the "pop-up tax" when conservation easements are imposed on land as part of a will, and as such it is designed to complement and extend the provisions of P.A. 446, passed overwhelmingly by the legislature in 2006.

As the long-time Executive Director of the Leelanau Conservancy, I worked closely with Senator Michelle McManus in 2006 to achieve passage of P.A. 446, which added land restricted by a conservation easement to the list of transfers which are exempt from the "pop-up tax." The rationale for PA 446, which the legislature overwhelmingly agreed with, was that by restricting important conservation land from further development a landowner foregoes any prospect of capturing the increase in future development value of the property. Conservation easements which qualify for a federal income tax deduction must benefit the public by protecting important wildlife habitat, must protect open space that is identified as part of a community parks or open space plan, or must protect scenic views that are of great importance and visible to the general public. By donating a conservation easement a landowner serves these public purposes and voluntarily restricts his or her future development options. Accordingly, under PA 446 donors of conservation easements are at least guaranteed that when the land transfers to the next generation, property taxes will be kept in check. In effect, the landowner promises to protect the property for the public's benefit, and the public recognizes that gift by restraining the growth in future property taxes.

Some landowners, wishing to protect property after they have died, but fearing potential catastrophic medical or other expenses during their lifetime, choose to place a conservation easement in a will or final testament rather than making the donation during their lifetime. The easement goes into effect and permanently protects the land only after the death of the owner. While this arrangement is not common, it does happen. For instance, in early 2010 the Leelanau Conservancy received a conservation easement over



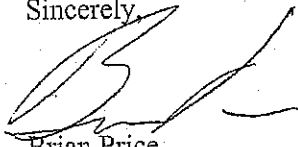
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important farmland adjacent to the M-22 Heritage Route that a long-time supporter had placed into her will.

The Attorney General's office has advised that, when a conservation easement is given as part of a will, the transfer of the land occurs at time of the donor's death, therefore before the conservation easement comes into effect. Since the easement is not yet in effect at transfer, the property is subject to the pop-up tax. When passed in 2006, I don't believe we considered how the provisions of PA 446 would apply in such situations. SB 805 corrects this oversight, and accordingly it follows the original purpose and intent of PA 446.

Thank you for agreeing to hold hearings on SB 805. If I can be of assistance or can answer questions regarding this bill please feel free to contact me at 231-256-9665 or by email at bprice@theconservancy.com.

Sincerely,



Brian Price
Executive Director
Leelanau Conservancy

cc: Senator Booher